## **EXHIBIT B**



**COURT REPORTING** 

LEGAL VIDEOGRAPHY

VIDEOCONFERENCING

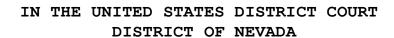
TRIAL PRESENTATION

MOCK JURY SERVICES

LEGAL TRANSCRIPTION

COPYING AND SCANNING

LANGUAGE INTERPRETERS



TESLA, INC.,

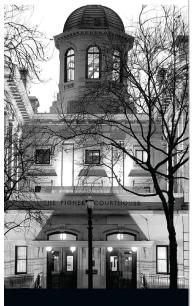
Plaintiff,

VS.

No.3:18-CV-00296-LRH-CBC

MARTIN TRIPP,

Defendant.





**DEPOSITION AND TRIAL** 



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**DEPOSITION OF** 

NICHOLAS RYAN GICINTO

TAKEN ON TUESDAAY, AUGUST 27, 2019 9:58 A.M.

HOME2SUITES CONFERENCE CENTER
2001 MAIN STREET
KANSAS CITY, MISSOURI 64108

1	CONFIDENTIAL
2	DEPOSITION OF
3	NICHOLAS RYAN GICINTO
4	TAKEN ON
5	TUESDAAY, AUGUST 27, 2019
6	9:58 A.M.
7	
8	THE VIDEOGRAPHER: We are on the record.
9	The time is 9:58 a.m. and the date is August the 27,
10	2019. This is the deposition of Nick Gicinto. The
11	case caption is Tesla, Incorporated vs. Martin
12	Tripp, United States District Court of Nevada. Would
13	counsel please introduce yourself and state whom you
14	represent.
15	MR. FISCHBACH: Good morning. William
16	Fischbach on behalf of the defendant and counter-
17	claimant, Mark Tripp.
18	MR. UMHOFER: Good morning. Matthew
19	Donald Umhofer on behalf of the deponent and Risk
20	IQ.
21	MR. GATES: Sean Gates on behalf of Tesla.
22	THE VIDEOGRAPHER: If the court reporter
23	will please swear in the witness.
24	NICHOLAS RYAN GICINTO, being first duly sworn,
25	testified under oath as follows:

## EXAMINATION

1

3

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## 2 BY MR. FISCHBACH:

- Q. Good morning, sir. Could we have your full name for the record.
  - A. Nicholas Ryan Gicinto.
  - Q. And sir, have you been deposed before?
- 7 A. Yes.
  - Q. I'm going to tell you a couple things you probably know but they're good to get on the record early on.
- 11 A. Okay.
  - Q. You strike me as an intelligent and educated guy, so you're probably going to anticipate a lot of my questions and where they're going.

    Please let me finish the question. It helps the court reporter get a good, clean record.
    - A. Okay.
  - Q. Let's do our best not to talk over each other, because again, it makes it much harder on the court reporter if she has to transcribe two people talking.
    - A. I understand.
  - Q. And then please know if you have an affirmative response or a negative response please give me a yes or a no or something along those

```
data on a chart in a Tableau --
 1
 2
             Tableau chart.
 3
             -- Tableau chart right down to the decimal
        Q.
   point.
 5
        Α.
             Yeah.
 6
             Is that data something that Mr. Tripp had
        Q.
 7
   authority to access as part of his normal job?
 8
             Well, it's interesting because data from
   the MOS, from the manufacturing and operating system
10
   is available to a number of production associates
11
   who are asked to run charts, who are asked to do
12
   different, you know, calculations, right, to produce
13
   metrics for their team so they can track progress.
14
             Did he have access?
                                   Yes.
15
             Was he authorized to use it in the way he
16
   did?
         No.
17
             And I appreciate you making that
18
   distinction because you're right, there's kind of
19
   two components of that, there's did he have
20
   authority to access the information and did he have
21
   authority to give it to Linette Lopez. I want to
   focus on the first question, which is, did Mr. Tripp
23
   as part of his ordinary job duties have authority to
24
   access the information in that Tableau?
25
        Α.
             As far as I know he, because he was able
```

```
to access it, he had authority based on the
 1
 2
   permissioning systems.
 3
        Q.
              I'm going to read a statement to you.
 4
             Okay.
        Α.
 5
              Tell me if it's true or false.
        Q.
 6
             Okay.
        Α.
 7
             To conduct his job responsibilities Tripp
        Q.
   was provided the ability to query and access
   confidential part, quality, and process data from
10
   Tesla's manufacturing operating system or MOS; true
11
   statement?
12
             May I read it? Is that possible?
        Α.
   more visual so forgive me. I'll preserve the fold.
13
14
             May I ask where this came from?
15
             You can ask.
        Q.
16
              I mean, if it's part of a broader
17
   statement or if there's context around it, it would
   be helpful, more helpful for me to answer the
18
19
   question.
20
             Generally speaking it's from a document
        Q.
21
   that Tesla prepared.
22
        Α.
             Okay.
23
             Other than that I would probably get into
24
   something that Mr. Gates might object to, but
25
   suffice to say these are words prepared by Tesla.
```

```
1
        Α.
             Okay. May I ask who in Tesla prepared
 2
   them?
 3
             MR. GATES:
                          I don't know.
 4
   BY MR. FISCHBACH:
 5
              Probably Mr. Gates or the associate
 6
   working for him.
 7
        Α.
             Okay.
 8
             MR. UMHOFER: No pressure.
 9
              I -- I believe that is a true statement.
10
   BY MR. FISCHBACH:
11
             Okay. Fair enough.
        Q.
12
        Α.
             I'm not trying to overly complicate it but
13
   seeing a snippet out of a document when you don't
14
   have the broader context of something bigger is
15
   difficult at times.
16
             I'll read you another statement.
        Q.
17
             Okay.
        Α.
18
        Q.
              In fact, I'll read it to you and then I'll
19
   show it to you.
20
             Get ready. Thanks.
21
              Tripp wrote structured query language SQL
        Q.
22
   scripts to obtain data from the entire Gigafactory
23
   running these queries from different computers using
24
   generic user names and downloading the data to a
25
   personal USB drive. I'm going to show you the
```

```
1
   statement so you can read it.
 2
        Α.
             Thank you.
 3
             MR. GATES: In the meantime, I'll
 4
   interject a foundation objection.
 5
             THE WITNESS:
                           Okay.
 6
             So based on what I recall from the
        Α.
 7
   investigation I wouldn't say that that is false.
   BY MR. FISCHBACH:
 9
        Q.
             Would you say it's true?
10
             It appears to be an accurate statement.
        Α.
11
             We talked earlier about -- I don't like
12
   putting words in your mouth, but I'm going to put
   words in your mouth. I believe you testified that
13
14
   the fact that Tripp was able to access the data he
15
   did was indicative of his authority to at least
   access that data, correct?
16
17
             Based on the permissioning systems, if he
18
   had access it was because he was given the authority
19
   to access it, yes, assuming it was permissioned
20
   correctly.
21
             All right. You obviously take issue with
        Q.
22
   how he used the data, but in terms of access he had
23
   authority to access the information?
24
             Correct. And as I -- as I recall, some of
   that access had been limited based on some
25
```

```
1
   questions. They don't typically answer them.
 2
              (Deposition Exhibit 6 was marked for
 3
   identification.)
   BY MR. FISCHBACH:
 5
             Sir, the court reporter has handed you
   what has been marked as Deposition Exhibit 6.
 7
   a tweet from Elon Musk dated July 5th of 2018.
                                                    Ιt
 8
   says, indeed very simple question. To be specific,
   @LopezLinette, did you compensate or promise to
10
   compensate Martin Tripp for inside information about
11
   Tesla, did he under that inducement provide you with
12
   exaggerated, negative info which you printed but
   turned out to be untrue?
13
14
             Did your investigation uncover evidence of
15
   Linette Lopez compensated or promised to compensate
16
   Martin Tripp for inside information about Tesla?
17
             Through the course of our investigation we
        Α.
18
   -- we saw indicators that suggested Mr. Tripp had a
19
   possible premeditated or preplanned or had
20
   preplanned the scenario to which he was going to
21
   provide information to Lopez. We saw indications
22
   that he was attempting to sell materials online,
23
   stating that he needed to sell, for example, a
24
   quitar because he was moving overseas soon. We saw
25
   -- we had information that he had attempted to sell
```

1 a firearm to an employee just a few days or weeks prior to providing the information to Ms. Lopez and 3 he also communicated to several employees that he had an early retirement plan which didn't seem to be 5 consistent with his -- with his tenure at the Gigafactory at that point in time, and his -- and so 7 the timing of him providing this information seemed to be very strange, so those factors presented a theory that perhaps he had been compensated for this 10 information given the fact that he had a plan to --11 potential plan to move overseas and that he had --12 he had some -- engineered some plan for a very early retirement within the next year or so, I believe. 13 14 Ultimately there was nothing that we uncovered 15 showing a connection to any compensation between him 16 and Ms. Lopez, but there were strange indicators 17 showing some premeditation of his plan. 18 Q. And obviously sitting here today you can't 19 tell me what Elon Musk was thinking when he wrote 20 this tweet in Exhibit 6? 21 Α. No idea. 22 Likewise, you can't tell me what Elon Musk 23 was thinking when he wrote the emails in Exhibit 5, 24 correct? 25 Α. Correct.

```
1
   wrote software that hacked Tesla's MOS they're just
 2
   referring to three queries about a half page like
 3
   this?
             Four queries, there were four things he
 5
   was looking for, bandoliers, modules and stators and
   inverters, so there's four, again that we know about
   based on -- based on this evidence.
 7
 8
             So again when Tesla alleges Mr. Tripp
   wrote software that hacked Tesla's MOS, all it
10
   really boiled down to was four of these half-page
11
   queries to obtain information that Mr. Tripp had
12
   authority to access; is that correct, sir?
13
             When you say all it really boils down to,
        Α.
14
   I think that, like diminishes the technical
15
   expertise that's required. I mean, you say this is
   half a page. It's half a page on an 11 by, what,
16
   17. That if you were -- I mean, four of those,
17
   that's actually two pages' worth of queries that
18
19
   somebody would need training and expertise to write.
20
             Did you understand my question?
21
             I understand your question and you're
   oversimplifying the question is what I'm explaining,
23
   you are boiling it down to, boy, wasn't this easy to
24
   do, and Tesla seems to be making a big deal out of
```

this. And what I'm saying is this query isn't as

25

```
1
   simple as your question is making it out to be, so
   I'm taking issue with the question is what I'm
 3
   saying. If you would like to rephrase it, I would
   be happy to answer it.
 5
             I don't know that I should rephrase it,
 6
   but I will say again, sir --
 7
        Α.
             It's your time.
 8
             -- Tesla alleges that Mr. Tripp wrote
   software that hacked Tesla's MOS, all that means is
10
   Mr. Tripp wrote four queries just like one on
11
   Deposition Exhibit 16?
12
             What --
        Α.
13
             MR. UMHOFER: Objection, lacks foundation.
14
   Asked and answered. Go ahead.
15
             MR. GATES:
                         Argumentative.
16
             What it means is he wrote four queries
17
   like this at least that we know of that obtained
18
   information that while he may have had the access
19
   technically he was not authorized to obtain for this
20
   purpose.
21
   BY MR. FISCHBACH:
22
        Q.
             True or false: Mr. Tripp authored hacking
23
   software and placed it into the computer systems of
24
   three other individuals at the company so that
   confidential Tesla data could be persistently
25
```

```
charges 395 now.
 1
             And I'm sure you're worth it, sir.
 2
 3
             MR. FISCHBACH: Thank you very much for
   your time today. I don't have any further.
 5
             MR. GATES: No further questions.
 6
             THE VIDEOGRAPHER: Please stand by. We do
 7
   need to take transcript and video orders on record.
 8
             MR. FISCHBACH: Oh, I've got to go first?
 9
   We'll do electronic with exhibits, please. Full size
10
   and mini.
11
             MR. GATES: I need electronic transcripts
12
   in text format and the video with sync.
13
             MR. FISCHBACH: Yeah, me too.
14
             MR. UMHOFER: We want an opportunity for
15
   him to review the transcript for accuracy.
             THE VIDEOGRAPHER: The time is 3:21 p.m.
16
17
   and we are going off the record.
18
              (Deposition concluded at 3:21 p.m.)
19
20
21
22
23
24
25
```